

STATE OF MICHIGAN
COURT OF APPEALS

RENEE DANIELLE JOYCE,

Plaintiff-Appellee,

v

TERENCE REGAN JOYCE,

Defendant-Appellant.

UNPUBLISHED

July 19, 2011

No. 301865

Oakland Circuit Court

Family Division

LC No. 2010-769679-DM

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right an amended judgment of divorce granting sole legal and sole physical custody of the parties' six minor children to plaintiff. We affirm.

Defendant challenges two of the trial court findings. First, he contends that the trial court's finding, that "[b]ecause the parties are unable to communicate or agree upon anything, Mother shall have sole legal custody," was against the great weight of the evidence. Second, he argues that the trial court's finding, that he physically abused his son, was against the great weight of the evidence. We note that three standards of review apply in child custody cases. *McIntosh v McIntosh*, 282 Mich App 471, 474; 768 NW2d 325 (2009). This Court must affirm all custody orders unless the trial court's findings of fact were against the great weight of the evidence, the court committed an abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). Further, this Court defers to the trial court's determinations of credibility, and its findings of fact will be affirmed unless the evidence clearly preponderates in the opposite direction. *Id.* The trial court's final determination is reviewed for an abuse of discretion in light of the overriding mandate of the child's best interests. *McIntosh*, 282 Mich App at 475. Further, the trial court abuses its discretion when its decision is so grossly contrary to fact and logic that it evidences perversity of will, defiance of judgment, or the exercise of passion or bias. *Berger*, 277 Mich App at 705-706.

First, we hold that the trial court did not err in finding, that "[b]ecause the parties are unable to communicate or agree upon anything, Mother shall have sole legal custody," because this finding was not against the great weight of the evidence. MCL 722.26a(1) provides, in pertinent part:

In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.¹

¹ MCL 722.23 provides the court with various factors to consider in determining the question of custody. Specifically, the statute provides:

As used in this act, “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child. [Footnote added.]

Furthermore, in order for joint custody to work,

parents must be able to agree with each other on basic issues in child rearing-including health care, religion, education, day to day decision-making and discipline-and they must be willing to cooperate with each other in joint decision-making. If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children. The establishment of the right to custody in one parent does not constitute a determination of the unfitness of the noncustodial parent but is rather the result of the court's considered evaluation of several diverse factors relevant to the best interests of the children. [*Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982) (citations omitted).]

In determining whether joint custody was in the children's best interest, the trial court made extensive findings on each of the twelve factors. The trial court found that plaintiff was favored on most factors.² Additionally, the trial court found that "the parties are unable to communicate or agree upon anything." This was supported by the record and not against the great weight of the evidence. At trial, the court took judicial notice of a personal protection order (PPO) issued against defendant that prohibited contact and communication between the parties. While the PPO was amended to allow defendant parenting time with his six children, it nonetheless prohibited contact and communication with plaintiff. The PPO, in itself, operated as a barrier preventing the parties from communicating. Also, Dr. Errol Liverpool, a psychologist who had met the parties at church and subsequently provided them with marriage counseling, testified that he characterized the parties as "fiery foes and angry associates in their marriage." The doctor opined that the parties' antagonistic relationship affects their ability to communicate and solve their conflicts. Dr. Liverpool also counseled each of the children, and he explained that all six of them expressed love and affection for plaintiff, but they made it clear that they wanted nothing to do with defendant.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

² Specifically, the trial court found that factors (a), (b), (d), (e), and (h) favored plaintiff. The trial court found that factors (c), (f), and (g) favored the parties equally, and factor (j) favored neither party. The trial court also interviewed each of the children and, after considering their preferences, noted that there were no other factors relevant to its determination.

Additionally, several witnesses, including LaDawn Douglas and Linda Ann Haynie Brandywine, testified that the parties disagreed on basic issues in child rearing, including religion, education, and discipline. Plaintiff also testified that she and defendant disagreed on the proper way to discipline the children. According to plaintiff, defendant had an authoritarian parenting style that often culminated in “spanking, screaming or yelling and confining someone to a room.” Plaintiff, on the other hand, had a less aggressive method of discipline and did not agree with corporal punishment as a way of disciplining her children.

Plaintiff also testified that the two disagreed on the importance of education and religion. Defendant believed that the children should do their chores, at the expense of studying and completing school assignments. Plaintiff testified that she disagreed with this approach and philosophy on education. In terms of religious views, plaintiff testified that children should be guided, but should be free to decide what they believe. She testified that defendant, on the other hand, “cram[med] it [religion] down [their] throats.” Defendant also testified that he and plaintiff had differing parenting styles and opinions on child rearing. In light of this evidence, we are not persuaded that the trial court’s finding that “the parties are unable to communicate or agree upon anything” was against the great weight of the evidence.

Moreover, in *Wright v Wright*, 279 Mich App 291, 299-300; 761 NW2d 443 (2008), quoting MCL 722.26a, the Court held that “joint custody was not an option, because the record reflected that the parties would not ‘be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.’” The Court noted that the record reflected a deep-seated animosity between the parties and an irreconcilable divergence in their opinions about how to foster each of the child’s well being. *Id.* at 299. It further noted that this antagonism affected their ability to make civil parenting exchanges. *Id.* at 299.

This case is similar to *Wright* because the record reflects that the “parties would not be able to cooperate and generally agree concerning important decisions affecting the welfare of the child[ren].” *Wright*, 279 Mich App at 299-300. The parties testified that each had opposing opinions and views regarding how to raise their children. Dr. Liverpool testified that the parties had strong animosity towards one another that affected their communication. Further, the PPO prevented the parties from communicating and making joint parenting decisions. Accordingly, the trial court did not abuse its discretion when it awarded sole legal custody to plaintiff.

Second, we hold that the trial court’s finding that defendant physically abused his children was also supported by the record and not against the great weight of the evidence. The trial court found that defendant physically abused his children when addressing factor (h) and factor (k).³ Regarding factor (h), the court found that “[t]here has been verbal and physical abuse of the children by the father.” Factor (k) takes into account “[d]omestic violence, regardless of

³ We note that defendant’s argument focuses solely on his son and whether the trial court erred in finding that he physically abused his son. However, the trial court did not make a specific finding regarding his son, instead it found that defendant physically abused all his children. Accordingly, we address the issue in that context.

whether the violence was directed against or witnessed by the child,” MCL 722.23(k), and the trial court found:

The 2005 child protection case in which I took jurisdiction over the children was initiated based on allegations of Father’s physical abuse of [the oldest daughter] and domestic violence against Mother, the PPO awarded to Mother against Father and the testimony of Dr. Liverpool and Mother have convinced me that the *children have been subjected to physical and verbal abuse by father*. Father testified that he does believe in physical discipline and that it is based in the Bible to some extent. I believe that Father is well-intentioned and does not realize the effect that his actions have had on his children and their mother. He does believe in physical discipline. He believes that the children have been coached and alienated by their mother. He does admit that Dr. Liverpool does not think the children have been coached and he professed to respect Dr. Liverpool. [Emphasis added.]

The trial court then concluded that these factors favored plaintiff.

After a thorough review of the record, we conclude that the evidence supports these findings. At trial, there was testimony from Dr. Liverpool that plaintiff admitted that she was emotionally abused by defendant. The children’s therapist also testified that the children stated that defendant was verbally and physically abusive. Specifically, Dr. Liverpool testified that during a counseling session, defendant’s two oldest daughters confessed that defendant screamed and yelled at them and constantly put them down. Defendant’s oldest son told Dr. Liverpool that defendant was abusive both physically and emotionally. Another daughter disclosed that defendant constantly put her down and belittled her.

Further, plaintiff testified that she petitioned the court for a PPO against defendant following a violent incident involving their oldest son and defendant. According to plaintiff, defendant had their son pinned to the ground, and she observed defendant’s “elbow going up and down.” While plaintiff admitted that she could not really observe her son’s face or whether defendant was striking him, immediately following the incident her son had red marks on his face and neck.

This evidence demonstrated that defendant engaged in physical and verbal abuse toward his children. In light of this evidence, we are not persuaded that the trial court’s finding that defendant physically and verbally abused his children was against the great weight of the evidence, and the evidence does not clearly preponderate in the opposite direction. Accordingly, defendant’s argument fails.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause